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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,774	11/09/2001	Hans-Karl Soest	Mo-6435/LcA 34,841	3090
34947	7590	08/19/2004	EXAMINER	
LANXESS CORPORATION PATENT DEPARTMENT/ BLDG 14 100 BAYER ROAD PITTSBURGH, PA 15205-9741			HOPKINS, ROBERT A	
			ART UNIT	PAPER NUMBER
			1724	

DATE MAILED: 08/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	Applicant(s)	
10/007,774	SOEST ET AL.	
Examiner	Art Unit	
Robert A Hopkins	1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5 is/are allowed.
- 6) ☒ Claim(s) 6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 6 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Chong(4380590).

Chong teaches a decolorized juice. Examiner notes that the patentability of product by process claims are based on the patentability of the product alone.

### ***Allowable Subject Matter***

Claims 1-5 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Claim 1 recites “a process comprising treating a colored sugar juice with a monodisperse anion exchanger having bead polymer spheres with a diameter ranging from 0.45 to 55mm, and decolorizing the sugar juice”. Chong discloses a monodisperse strongly basic anion exchange resin emulsion having median particle diameters from about 0.01 to 1.5 microns. It would not have been obvious to someone of ordinary skill in the art at the time of the invention to provide a monodisperse anion exchanger having bead polymer spheres with a

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diameter ranging from 0.45 to 55mm because Chong does not suggest such a modification. Claims 2-5 depend on claim 1 and hence are also allowed.

### ***Response to Arguments***

Applicant's arguments filed 6-23-04 have been fully considered but they are not persuasive.

Applicant argues with respect to claim 6 that Chong does not disclose the decolorized juice obtained from the amended process of claim 1.

Examiner notes that Chong in example 27 clearly teaches treating a colored sugar juice with a monodisperse anion exchanger(column 22 line 59, column 4 lines 49-62, noting controllable small particle size). Examiner also notes that claim 6 is a product by process claim, therefore the patentability of the product does not depend on the process(see MPEP 2113). Examiner notes that the product is directed to a decolorized juice, and Chong clearly teaches "decolorization of a washed raw sugar solution". Therefore, examiner respectfully submits that the decolorized juice in the product by process claim 6 is the same as or obvious from the decolorized juice of Chong, although the decolorized juice of Chong was made by a process using a monodisperse anion exchange resin emulsion having different diameter resin spheres. Examiner notes that applicant has not established that the decolorized juice obtained in example 27 has different characteristics than the decolorized juice of claim 6. Examiner notes that the decolorized juice of claim 6 does not provide any further chemical or physical characteristics which distinguish the juice from the decolorized juice of Chong.

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With regard to the 102/103 rejection to Chong, applicant argues one of ordinary skill in the art following the teachings of Chong would not have been motivated to modify Chong's practice or make applicant's invention. Examiner notes from MPEP 2113 that the use of 35 U.S.C 102/103 rejections for product by process claims has been approved by the courts, due to the lack of physical description in a product by process claim.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

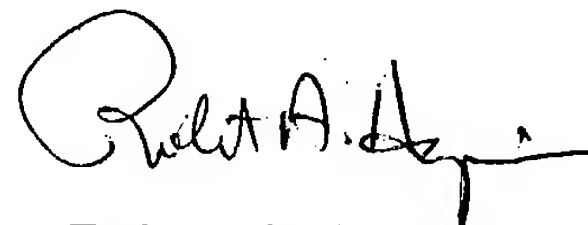
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A Hopkins whose telephone number is 571-272-1159. The examiner can normally be reached on Monday-Friday, 7am-4pm, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert A Hopkins  
Primary Examiner  
Art Unit 1724

Rah  
August 17, 2004